

REMARKS

Claims 1-24 are presented for examination. Claim 13 has been cancelled without prejudice or disclaimer. Claim 14 has been rewritten in independent form.

The drawings have been objected to. The Office Action indicates that the drawings are acceptable subject to correcting informalities indicated on the attached form PTO-948. However, no form PTO-948 is attached. Moreover, the Office Action Summary does not indicate that the form PTO-948 is attached.

Claim 13 rejected under 35 U.S.C. § 112, second paragraph, has been cancelled.

REJECTION OF CLAIMS 1-3, 13 AND 21

Claims 1-3, 13 and 21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Treys et al. in view of Guheen et al. This rejection is respectfully traversed.

First, it is respectfully submitted that the rejection of claim 21 is improper. This claim depends from claim 14. However, the Examiner admits that a combination of Treys et al. and Guheen et al. is not sufficient to suggest the subject matter of claim 14.

Further, independent claim 1 recites a retail system comprising:

- an advance ordering system for enabling a customer to order a purchase in advance,
- at least one storage facility for storing goods available for ordering, and
- multiple purchase obtaining facilities remote with respect to the storage facility, for enabling the customer to obtain the ordered purchase delivered from the storage facility after receiving an order for the purchase from the customer.

The claim specifies that the purchase obtaining facilities include at least one drive-through purchase obtaining facility for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle.

The Examiner holds Treyz to differ from the claimed subject matter only in that the reference does not disclose the purchase obtaining facilities remote with respect to the storage facility. Guheen is relied upon for disclosing the claimed purchase obtaining facilities.

However, the Examiner admits that the combination of Treyz with Guheen does not disclose that the purchase obtaining facility is remote from the storage facility, as the claim requires. The Examiner relies upon *In re Japikse* for support of his position that this feature would be obvious. The Examiner's position of obviousness is respectfully traversed.

In relying upon *In re Japikse*, the Examiner must show that the claimed features do not modify operation of the claimed system. However, the record fails to meet this requirement.

According to *In re Japikse*, there is no invention in shifting a component to a different position when the operation of a claimed device is not modified thereby. However, one skilled in the art of retail would understand that the operation of the retail system claimed in claim 1 is substantially modified compared to regular retail system by the fact that the purchase obtaining facilities are arranged remote with respect to the storage facility. Specifically, regular retail facilities, such as supermarkets, having purchase obtaining facilities provided together with the storage facility for storing available goods enable customer to immediately pick up a required product. However, such retail facilities cannot provide a large assortment of available goods. In addition, their retail costs are very high due to costs relating to storage of products.

By contrast, the present invention allows a retailer to maintain a large assortment of products without having to store a large amount of products in the retail facility. The retail system claimed in claim 1 enables the customer to order products maintained at a storage facility remote with respect to a purchase obtaining facility. The ordered products are delivered from the remote storage facility to a drive-through purchase obtaining facility for enabling the customer in

a vehicle to pick up the ordered purchase delivered to the vehicle.

Hence, the operation of the claimed retail system is substantially modified due to providing a purchase obtaining facility remote with respect to the storage facility. Accordingly, the Examiner's conclusion of obviousness is not warranted.

Further, the Examiner relies upon Treyz (col. 10, lines 34-42 and col. 65, lines 45-60) for disclosing the claimed drive-through purchase obtaining facility for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle.

Considering the reference, Treyz discloses handheld computing device 12 that "may be used in an automobile for wireless financial transactions such as purchasing gasoline from a gas station, paying tolls on highways, paying for parking in parking garages and parking lots, paying for food at drive-through restaurants, etc." (col. 65, lines 45-49). A similar disclosure is found in col. 10, lines 34-42.

Accordingly, Treyz does not teach or suggest a drive-through purchase obtaining facility for enabling the customer in a vehicle to pick up the ordered purchase delivered from the remote storage facility, as claim 1 requires.

It is well settled that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985). In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

As demonstrated above, the reference combination applied by the Examiner is not sufficient to arrive at the invention recited in claim 1. Claims 2-3 dependent from claim 1 are

defined over the prior art at least for the reasons presented above in connection with claim 1.

Accordingly, the rejection of claims 1-3 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Treys et al. in view of Guheen et al. is improper and should be withdrawn.

REJECTION OF CLAIMS 4-7, 9, 10, 12, 14-20 AND 22-24

Claims 4-7, 9, 10, 12, 14-20 and 22-24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Treys et al. in view of Guheen et al. and further in view of Tsujita.

Independent claim 14 recites a method of selling goods, comprising the steps of:

- storing the goods available for sale in a storage facility,
- enabling a customer to order a purchase,
- providing a drive-through purchase obtaining facility remote with respect to the storage facility and having multiple pick-up stations, each arranged for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle, and
- automatically assigning to the customer one of said multiple pick-up stations when the customer arrives at the drive-through purchase obtaining facility.

With respect to claim 14, the Examiner states that “Treyz teaches a step of automatically assigning to the customer one of multiple pick-up stations within the drive through-obtaining facilities (see response to claim 4).” However, in his response to claim 4, the Examiner admits that neither Treyz nor Guheen teaches the step of automatically assigning a particular pick-up station (page 6 of the Office Action). Moreover, in connection with claim 3, the Examiner admits that the combination of Treyz and Guheen does not disclose multiple pick-up stations (page 4 of the Office Action).

Accordingly, the rejection of claim 14 is improper and should be withdrawn.

It is noted that in the response to claim 4, FIG. 22 of Tsujita is relied upon for disclosing the step of automatically assigning to the customer one of said multiple pick-up stations.

Considering Tsujita, the reference discloses a management system for managing a bowling alley having multiple lanes. FIG. 22 shows a flowchart of data processing by a front manager during the data reception. When an empty bowling lane is available, the front manager executes lane assignment, prints a lane sheet, and transfers the bowler names to the console corresponding to the bowling lane.

Hence, Tsujita does not teach a drive-through purchase obtaining facility having multiple pick-up stations, each arranged for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle, and does not suggest automatically assigning to the customer one of the multiple pick-up stations when the customer arrives at the drive-through purchase obtaining facility, as claim 14 requires.

Moreover, to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, two basic criteria must be met. First, there must be some suggestion or motivation in the references to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success for the modification or combination of references. The teaching or suggestion to make the modification or combination of prior art and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As one skilled in the art would understand, no motivation is suggested in the references for modifying Treyz (relied upon by the Examiner for disclosing the drive-through purchase obtaining facility) in view of the Tsujita teaching of assigning bowling lanes. It is respectfully submitted that Treyz does not teach a bowling alley and does not need to assign bowling lanes. Therefore, it

is not apparent why one skilled in the art would have recognized any advantage to be gained by the proposed combination of references.

Moreover, as discussed above, in connection with claim 3, the Examiner admits that the combination of Treyz and Guheen does not disclose multiple pick-up stations (page 4 of the Office Action). Accordingly, these references provide no reason to one skilled in the art even to consider an assignment mechanism for assigning to a customer one of the multiple pick-up stations.

Furthermore, even if the references were combined as suggested by the Examiner, the claimed invention would not result because the combined teachings would not suggest providing a drive-through purchase obtaining facility remote with respect to the storage facility and having multiple pick-up stations, each arranged for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle, and automatically assigning to the customer one of the multiple pick-up stations, as claim 14 requires.

Independent claim 22 recites a drive-through retail facility for enabling a customer in a vehicle to make a purchase without leaving the vehicle, the retail facility comprising multiple purchase pick-up stations, and an assignment arrangement for automatically assigning one of the multiple pick-up stations to the customer in response to information provided by the customer.

The Examiner relies upon Treyz for disclosing the subject matter of claim 22 (page 9 of the Office Action). However, as discussed above, the Examiner admits that this reference does not disclose retail facility comprising multiple purchase pick-up stations, and an assignment arrangement for automatically assigning one of the multiple pick-up stations to the customer.

Accordingly, the rejection of this claim is improper and should be withdrawn.

Moreover, as demonstrated above, the applied references do not teach or suggest a drive-

through retail facility comprising multiple purchase pick-up stations, and an assignment arrangement for automatically assigning one of the multiple pick-up stations to the customer in response to information provided by the customer, as claim 22 requires.

The dependent claims 4-7, 9, 10, 12, 15-20 and 23-24 are defined over the prior art at least for the reasons presented above in connection with the respective base claims. Moreover, the references do not teach or suggest some of the features recited in these claims.

For example, claim 4 dependent from claim 1 recites that the drive-through purchase obtaining facility further comprises a control station responsive to identification (ID) data identifying the customer for automatically assigning a pick-up station of the multiple pick-up stations to the customer. As discussed above, the combined teachings of the references would not teach or suggest the claimed control station.

Accordingly, the rejection of claims 4-7, 9, 10, 12, 14-20 and 22-24 under 35 U.S.C. § 103(a) as being unpatentable over Treys et al. in view of Guheen et al. and further in view of Tsujita is improper and should be withdrawn.

REJECTION OF CLAIM 8

Claim 8 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Treys et al. in view of Guheen et al., in view of Tsujita and further in view of Official Notice. This rejection is respectfully traversed.

Claim 8 dependent from claim 4 recites that the control station enables the customer to enter the drive-through purchase obtaining facility only after the customer is identified.

The Examiner admits that the applied references do not disclose this feature. However, he takes the position that it would have been obvious to include in Treyz/Guheen/Tsujita the gate system of the instant application to prevent unauthorized persons from entering the facility. The

Examiner's position is respectfully traversed.

First, as discussed above, the combination of Treyz/Guheen/Tsujita does not teach or suggest the drive-through facility of the present invention.

Second, as one skilled in the art of retail would realize, known drive-through retail facilities cannot have the claimed control station enabling the customer to enter the drive-through purchase obtaining facility only after the customer is identified, because the known drive-through facilities have no means to identify arriving customers.

Accordingly, the Examiner's position of obviousness with respect to claim 8 is not warranted.

REJECTION OF CLAIM 11

Claim 11 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Treyz et al. in view of Guheen et al., in view of Tsujita and further in view of Ramachandran.

Claim 11 has been amended to more clearly define the claimed invention. The claim, as amended, recites that the check-out station enables the customer to exit the drive-through purchase obtaining facility only after the ordered purchase is checked out.

The Examiner admits that Treyz et al., Guheen et al., and Tsujita do not disclose the claimed invention. FIG. 28 of Ramachandran is relied upon for disclosing enabling exit after picking up of product.

FIG. 28 of Ramachandran shows a display screen at a motor fuel dispensing facility. The screen displays the user's available credit and gives the user the option to either stop, begin pumping fuel or continue inputting notes to the dispensing machine (col. 19, lines 41-45).

Hence, the system of Ramachandran does not enable the customer to exit the drive-through purchase obtaining facility only after the ordered purchase is checked out.

Further, it is respectfully noted that there is no motivation to modify the systems of Treys et al., Guheen et al., and Tsujita in view of the Ramachandran teaching, because none of these systems discloses a motor fuel dispensing facility, and needs means to control pumping fuel suggested by Ramachandran.

Accordingly, the subject matter of claim 11 is defined over the reference.

CONCLUSION

In view of the foregoing, and in summary, claims 1-12, and 14-24 are considered to be in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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